

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1958 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

V A JHALA

Versus

STATE OF GUJARAT

Appearance:

MR IS SUPEHIA for Petitioner

Mr. B.Y.Mankar for Respondent Nos. 1 and 2.

MR YN RAVANI for Respondent Nos. 3 and 4.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 18/01/99

ORAL JUDGEMENT

By means of this petition, the petitioner has sought for a direction to the respondent nos. 2 and 3 to finalise the dues as on 29.2.84 including any other recovery already made and pay the remaining amount of death cum retirement gratuity with interest at the rate of 18% per annum from 1.3.84. The petitioner was working

as a Deputy Superintendent of Police, CID, Crimes, Ahmedabad who retired on 29.2.84. The respondent no. 4 withheld the payment of death cum retirement gratuity amount to the tune of Rs. 26482.50 ps. on the ground that no due certificate for the motor vehicle advance etc. was available. The petitioner was sanctioned an amount of Rs.4000/- and that amount was to be paid in instalments and instalments continued to be paid till September, 1983. The remaining amount of Rs.500/- was also paid on 29th October, 1983 under token no. 843. It is also asserted that the amount of gratuity was required to be paid to the petitioner next day after his retirement on provisional basis after deducting certain dues and reserving the amount of Rs.1000/- or 10% of death cum retirement gratuity. On 3.12.85, the respondent no. 3 released the amount of Rs.16482.50 ps. after withholding the amount of Rs.10,000/- from the total DCRG of Rs.26482.50 ps. There was nothing to be recovered from the petitioner even then the amount of Rs.10000/- had already been withheld. As such, the petitioner is also entitled for the interest at the rate of 18% per annum on DCRG amount with effect from 1.3.84 till the date of payment.

3. Affidavit-in-reply has been filed on behalf of the respondent nos. 3 and 4 in which it is asserted that on the retirement of the petitioner, the petitioner was entitled to death cum retirement gratuity amount of Rs. 26462.50 ps. out of which amount at the time of retirement, a sum of Rs.16480.50 ps. had already been paid to the petitioner. As the office of the Superintendent of Director General of Police and Inspector of Police, Gujarat had sent a letter to the respondent no. 3 that though the petitioner had retired, he has not vacated the government quarter allotted to him and a sum of Rs.1460/- per month towards rent is required to be recovered from him with effect from 1st May, 1984. The respondent no. 2 by his letter dated 29.3.85 informed the respondent no. 3 that an amount of Rs. 5795.20 ps. was required to be recovered from the petitioner. It is also mentioned that there was no due towards scooter loan amount. The amount of Rs.4200/- had also been released on 14.4.86. According to the respondent no. 2, the petitioner is liable to pay Rs.5795.30 ps. towards house rent. The office of respondent nos. 4 and 5 has withheld the amount of Rs.5860/- out of gratuity amount as stated above. If any amount remains due that will be paid to the petitioner after receiving instructions from the respondents.

4. The learned counsel for the petitioner submits that

the petitioner has retired on 29th February, 1984 and the amount of Rs.4200/- was released in favour of the petitioner on 14.4.86 after more than two years. The contention of the learned counsel for the petitioner is that so far as the amount of rent is concerned, the petitioner should have been afforded an opportunity in that respect and without affording an opportunity, such amount cannot be deducted from the amount of gratuity. Under Rules, the Government servants are required to vacate the residential quarter within a specific period and if they retain for a long time, the department is entitled to recover that amount from the amount which is with the department concerned. Thus, the contention of the petitioner that the department is not entitled to recover the amount of rent directly from the gratuity without giving an opportunity of hearing is not sustainable. But in the instant case, the amount of Rs.4200/- out of gratuity was released on 14.4.86 after a period of two years. For that purpose, the petitioner is entitled for the interest at the rate admissible under Rules. In this respect, the learned counsel for the petitioner pointed out from the Government Finance Department Resolution dated 13.5.86 which provides for rate of interest if the amount is paid beyond three months and upto one year, rate of interest is provided at 7% per annum and beyond one year it is 10% per annum. No doubt in special circumstances, the Court can direct higher rate of interest.

5. I have carefully considered the entire facts and circumstances of the case and I find that the amount of Rs.4200/- was paid to the petitioner on 14.4.84, i.e. after a period of more than two years. The petitioner is at least entitled for the interest at the rate admissible under Rules. If any amount of the petitioner remains with the department, the respondents are directed to release the same with interest admissible under Rules within three months from the date of this order.

6. Accordingly, the petition is allowed. The respondents are directed to pay to the petitioner the amount of interest on the amount of RS. 4200/- stated above and the remaining amount of death cum retirement gratuity with interest admissible under Rules within three months from the date of this order. Rule is made absolute

...
***darji